



**Katherine Gallo, Esq.**  
**Discovery Referee, Special Master, and Mediator**  
**1-650-571-1011**

## **DEPOSITONS--What are the Real Objections?**

**By Katherine Gallo**

In the spirit of my most recent article, "**OBJECTION!! There's this case that says . . .**", here is a list of proper and improper objections to deposition questions that you should also keep in the back of your legal pad.

### **OBJECTIONS TO DEPOSITION QUESTIONS**

Objections to the form of questions are waived if not raised at the deposition. Weil and Brown, *Cal Prac. Guide: Civil Procedure Before Trial* (TRG 2010) ¶8:721 (citing C.C.P. §2025.460(b)).

Instructing witness not to answer is improper unless objecting on grounds of privilege. CCP §2025.460; *Stewart v. Colonial Western Agency, Inc.* (2001) 87 CA4th 1006, 10015.

Speaking objections which counsel explains his rationale for the objection is improper as it is usually used as a tactic to give the deponent a heads up that the area of questioning is dangerous and how he should answer. This is a form of "coaching" the witness and a protective order may need to be sought. See CEB, *California Civil Discovery Practice* (4th ed. 2010) §6:100.

**969G Edgewater Blvd., Suite 345 Foster City, CA 94404**  
**phone: (650)571-1011 fax: (650)571-0793 [klgallo@discoveryreferee.com](mailto:klgallo@discoveryreferee.com)**



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**OBJECTIONS TO THE FORM OF THE QUESTION (CCP §2025.460)**

**PROPER OBJECTIONS:**

**Calls for Contention:** *Rifkind v. Superior Court* (1994) 22 CA 4th 1255.

**Irrelevant to the Subject matter:** C.C.P. §2017.010.

**Calls for Legal Reasoning:** *Sav-On Drugs v. Sup. Ct.*(1975) 15 C3d 1.

**Calls for Narration or Lengthy Explanation**

**Calls for Speculation or Conjecture**

**Compound**

**Harassing and oppressive**

**Incomplete Hypothetical**

**Leading (if not an adverse witness)**

**Unintelligible**

**Vague and Ambiguous:** *Deyo v. Kilbourne*(1978) 84 CA 3d 771.



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**IMPROPER OBJECTIONS**

**Answer is known to propounding party:** *Alpine Mut. Water Co. v. Sup. Ct.*(1968) 259 CA2d 45,54.

**Argumentative:** C.C.P. §2017.010.

**Asked and answered:** *Coy v. Sup. Ct.* (1962) 58 C2d 210,218.

**Assumes facts not in evidence:** *West Pico Furniture v. Sup. Ct.* (1961) 56 C2d 407,421.

**Calls for conclusion:** C.C.P. §2017.010.

**Insufficient foundation:** C.C.P. §2017.010.

**Hearsay:** C.C.P. §2017.010.

**Irrelevant to the issues:** C.C.P. §2017.010.

**Calls for a narrative:** C.C.P. §2017.010.

**Calls for an opinion:** C.C.P. §2017.010.

**Oppressive:** *Coy v. Sup. Ct.* (1962) 58 C2d 210,218.

*Lists of the objections as to form can be found in Weil and Brown, Cal Prac. Guide: Civil Procedure Before Trial (TRG 2010) ¶8:721 et seq. and CEB, California Civil Discovery Practice (4th ed. 2010) §6.98.*

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### **OBJECTIONS ON THE CLAIM OF PRIVILEGE**

You must state the privilege or it will be deemed waived. See Weil and Brown, *California Practice Guide: Civil Procedure Before Trial* (TRG 2010) ¶8:725 citing CCP§2025.460(a) and *International Insurance Co. v. Montrose Chemical Corp. of California* (1991) 231 CA3d 1367,1373.

#### **ABSOLUTE PRIVILEGES**

**Attorney-Client:** Evid.Code §§950-962.

**Confidential Marital Communications:** Evid.Code §§980- 987.

**Clergy-Penitent:** Evid.Code §§1030-1034.

**Defendant in Criminal Case:** Evid.Code §930.

**Domestic Violence Counselor-Victim:** Evid.Code §§1037-1037.8.

**Human Trafficking Caseworker-Victim:** Evid.Code §§1038-1038.2.

**Official Information and Identity of Informer:** Evid.Code §§1040-1047.

**Physician-Patient:** Evid.Code §§990-1007.

**Political Vote:** Evid.Code §§1050.

**Psychotherapist-Patient:** Evid.Code §§1010-1027.

**Self Incrimination:** Evid.Code §§940.

**Sexual Assault Counselor-Victim:** Evid.Code §§1035-1036.2.

**Testify Against Spouse:** Evid.Code §§970-973.

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### **QUALIFIED PROTECTIONS**

Disclosure may be compelled if the Court finds that the interests of justice in obtaining the information outweighs the protection. See Weil and Brown, *Cal Prac. Guide: Civil Procedure Before Trial* (TRG 2010) ¶8:110.5 citing *Gonzalez v. Superior Court* (1995) 33 CA4th 1539, 1548.

**Invasion of Privacy:** California Constitution Article 1, Section 1.

**Taxpayers Privilege:** Rev. & Tax C. §19542 See *Schnabel v. Superior Court* (1993) 5 C4th 704 and Weil and Brown, *Cal Prac. Guide: Civil Procedure Before Trial* (TRG 2010) ¶8:112 - 124.6.

**Trade Secret:** C.C.P. §2019.210;Evid.Code 1160-1063 SEE Weil and Brown, *Cal Prac. Guide: Civil Procedure Before Trial* (TRG 2010) ¶8:129.

**Work Product:** C.C.P. §2018.030.